

Chapter 2

Applying for Public Assistance

Section A - Applicant Eligibility

Following a disaster declaration by the President, and a designation for public assistance by FEMA, assistance for recovery from the disaster is made available to eligible applicants. Eligible applicants are those who are legally responsible for eligible work in the designated disaster area and are one of the following:

- ◆ State or State agency;
- ◆ Local government—such as a city, county, or town;
- ◆ Other State political subdivision, such as a special district;
- ◆ Indian tribe or authorized tribal organization, and Alaska Native village or organization. This does not include Alaska Native Corporations which are privately owned;
- ◆ Private Nonprofit (PNP) organizations if they own and operate certain types of damaged facilities; and,
- ◆ Public entities and rural unincorporated communities provided that an application is submitted on their behalf by a political subdivision of the State.

The types of qualifying PNPs fall into the following six categories:

Medical

A medical facility is any hospital, outpatient facility, rehabilitation facility, or facility for long-term care, as defined in Section 645 of the Public Health Service Act, and any similar facility offering diagnosis or treatment of mental or physical injury or disease, including the administrative and support facilities essential to the operation of the medical facility even if not contiguous.

Section 645 defines medical facilities as follows:

Hospitals include general, tuberculosis, and other types of hospitals and related facilities; such as laboratories, outpatient depart-

ments, nursing home facilities, extended care facilities, facilities related to programs for home health services, self-care units, and central service facilities, operated in connection with hospitals. This category also includes education or training facilities for health profession personnel operated as an integral part of a hospital. A hospital that primarily furnishes domiciliary care is not considered as a hospital.

Outpatient facility is defined as a facility located in or apart from a hospital for the diagnosis and/or treatment of ambulatory patients. The facility may be operated in connection with a hospital or in which patient care is under the professional supervision of a doctor licensed in the State.

Rehabilitation facility is defined as a facility that is operated for the purpose of assisting the rehabilitation of disabled persons through a program of medical evaluation and services and psychological, social, or vocational evaluation and services that are under competent professional supervision. The major portion of these services should be furnished in the facility.

Facility for long-term care is defined as a facility providing in-patient care for convalescent or chronic disease patients who require skilled nursing care and related medical services. The facility may be in a hospital, operated in connection with a hospital, or be in a location where services performed are under the supervision of a doctor licensed in the State.

Custodial Care

Custodial care facilities are those buildings, structures, or systems, including those essential administration and support buildings, that are used to provide institutional care for persons who do not require day-to-day care by doctors or by other professionals, but do require close supervision and some physical constraints on their daily activities.

Educational

An educational institution is defined as follows:

For primary and secondary schools, a day or residential school that provides primary or secondary education as determined under State law. This generally means that the school satisfies State requirements for compulsory attendance.

For higher education, an educational institution is defined as an institution in any State that:

1. Admits as regular students only persons having a certificate of graduation from a secondary school or a recognized equivalent of such certificate;
2. Is legally authorized within a State to provide a program of education beyond the secondary level;
3. Awards a bachelor's degree or a two-year certificate that is acceptable for full credit towards a bachelor's degree; and,
4. Is accredited by a nationally recognized accrediting agency or association. [Special criteria apply to institutions that are not accredited. Consult the GAR.]

A higher education institution is also defined as any school that provides not less than a one-year training program to prepare students for gainful employment in a recognized occupation and that meets the provisions of subparagraphs 1, 2, and 4 above.

Emergency

Emergency facilities include fire departments, search and rescue teams, and ambulances. Buildings, vehicles, and other equipment used directly in performing emergency services are eligible.

Utility

A utility includes facilities necessary for the generation, transmission, distribution and maintenance of electric power, telephone, sewer and water, and gas services.

Other

The category is defined as facilities that provide essential services of a governmental nature and are open to the general public.

These facilities are museums, zoos, community centers, libraries, homeless shelters, senior citizen centers, rehabilitation facilities, shelter workshops and facilities which provide health and safety services of a governmental nature. Health and safety services are essential services that are commonly provided by all local governments and which directly effect the health and safety of individuals. Low-income housing, alcohol and drug rehabilitation, pro-

grams for battered spouses, transportation to medical facilities, and food programs are examples of health services. Examples of ineligible services or facilities are: recreational facilities, job counseling or job training, advocacy groups not directly providing health services, conference facilities, performing arts and other groups not providing health and safety services.

Examples of services that would *not* be considered as an essential governmental type include: political education, advocacy or lobbying, religious service or education, social events and roads owned and operated by a property owners association. There is a second criterion that this category of PNP must meet. It is that the service must be available to the general public. This means that the primary purpose of the facility should be to provide a service to the public that is not restricted by a specific definition or by prohibitive fees. If access to use the facility is restricted to members that have a financial interest in the facility such as a condominium association, or to a certain number of members, or to a geographical area smaller than normal for the type of facility, it probably would not be eligible. Conference facilities operated for a fee would not be eligible in this category. Membership requirements or restrictions on use of the facility that do not disqualify a PNP for public assistance include: a fee that covers only administrative processing costs, a fee that can be waived upon demonstration of need, or restriction to a group of users where at least one parameter is open ended, such as all youth between ages 6 and 16.

The primary purpose for the establishment of the facility is important for the eligibility determination. A facility established as a church (an ineligible purpose) might be used on occasion as a homeless shelter, while its primary purpose remained as a church. It would be ineligible based on the primary or majority use. However, the same organization might have the ineligible church building and also a separate eligible homeless shelter.

Assistance for all PNPs is limited to repair or replacement of damaged facilities and "related costs." An example of related costs would be protective measures to prevent damage to the facility or contents. Contents could be moved to temporary storage facilities for protection. The provision of temporary facilities and moving costs must be evaluated according to the criteria for emergency work in Chapter 3. The moving costs as well as necessary alterations at the new location might be eligible if the continued opera-

tion of the facility was necessary to meet immediate threats to life or property. If the PNP was located in rented facilities, repairs to the facility would not be eligible unless the written lease placed such responsibility on the PNP. The expenses of renting a temporary facility would not be eligible.

This limitation on assistance for PNPs means that operating costs for providing services are not eligible, even if increased by the disaster event. The basis for this policy is that most of these organizations are organized for the purpose of providing charitable services to deserving persons. The ineligible items include labor, material, and equipment costs for providing assistance services to disaster victims, even if the services are not the same as the organization's basic mission. If the organization is providing services under contract to a local government or State agency, the work may be eligible if it is claimed by that government or agency.

In addition to considering the types of facilities, certain criteria for the eligibility of the owning organization must be met. The organization must have:

- ◆ An effective ruling letter from the U.S. Internal Revenue Service granting tax exemption under Section 501(c), (d), or (e) of the Internal Revenue Code of 1954, as amended; or,
- ◆ State certification that it is a nonprofit organization under State law.

Public entities are those organizations that are formed for a public purpose but are not political subdivisions of a State or a local government. To qualify for assistance, these types of applicants must receive the majority of their funding from the State or a political subdivision of the State. The application for a public entity must be made by a State or a political subdivision of the State that will be responsible for completion of the work in accordance with FEMA regulations.

Rural communities include communities that are not political subdivisions of a State, but communities where citizens have banded together for the purposes of maintaining common facilities. The original purpose of the facility must have been for the use of the general public and not for private or commercial uses. One firm requirement for this type of applicant, however, is that the facilities must be owned by a private nonprofit organization in order for the grantee to have dealings with a legal entity. As with a public entity,

if the State or political subdivision of the State is willing to assume responsibility for the work and submit the application, the work may be eligible under these criteria. A political subdivision is limited to county or city sponsorship.

Section B - The Applicants' Briefing and Damage Survey Reports

As soon as possible following the President's declaration of an emergency or a major disaster, the GAR will conduct meetings for all potential applicants for disaster assistance. Normally, FEMA staff will participate in these briefings. The GAR will notify each applicant of the date, time and location of the Applicants' Briefing that they will need to attend. The maximum benefit may be obtained from these briefings if an elected official, a public works department representative and a financial management representative all attend the meeting. Depending upon the number of potential applicants or the geographical extent of the disaster, there may be more than one briefing. At this briefing, application procedures, administrative requirements, funding and program eligibility criteria will be explained.

Applicants in attendance will be requested to complete and submit a Notice of Interest (NOI) in Applying for Federal Disaster Assistance (Figure 2-1, 2-2). As shown in Figure 2-1, the applicant should indicate the broad categories of work and facilities that were damaged by the disaster incident. The damages indicated in the seven categories (A through G) will be inspected by a joint Federal, State and local inspection team. The functions of the NOI are to assign inspectors and to provide a point of contact with the applicant. Incorrect checking or failure to check categories, does not penalize the applicant. The representative named in the Agent block of the NOI should be an individual who is thoroughly knowledgeable of the facilities and the work to be inspected. The representative should be able to be easily contacted and both business and home telephone numbers should be provided. The NOI is normally completed and submitted at the applicants' briefing. A PNP organization is also required to complete and submit page 2 of this form, (Figure 2-2). This form identifies the documents which must be submitted by the PNP by the prescribed deadline. Counties may be added to a disaster designation area after the

Figure 2-1

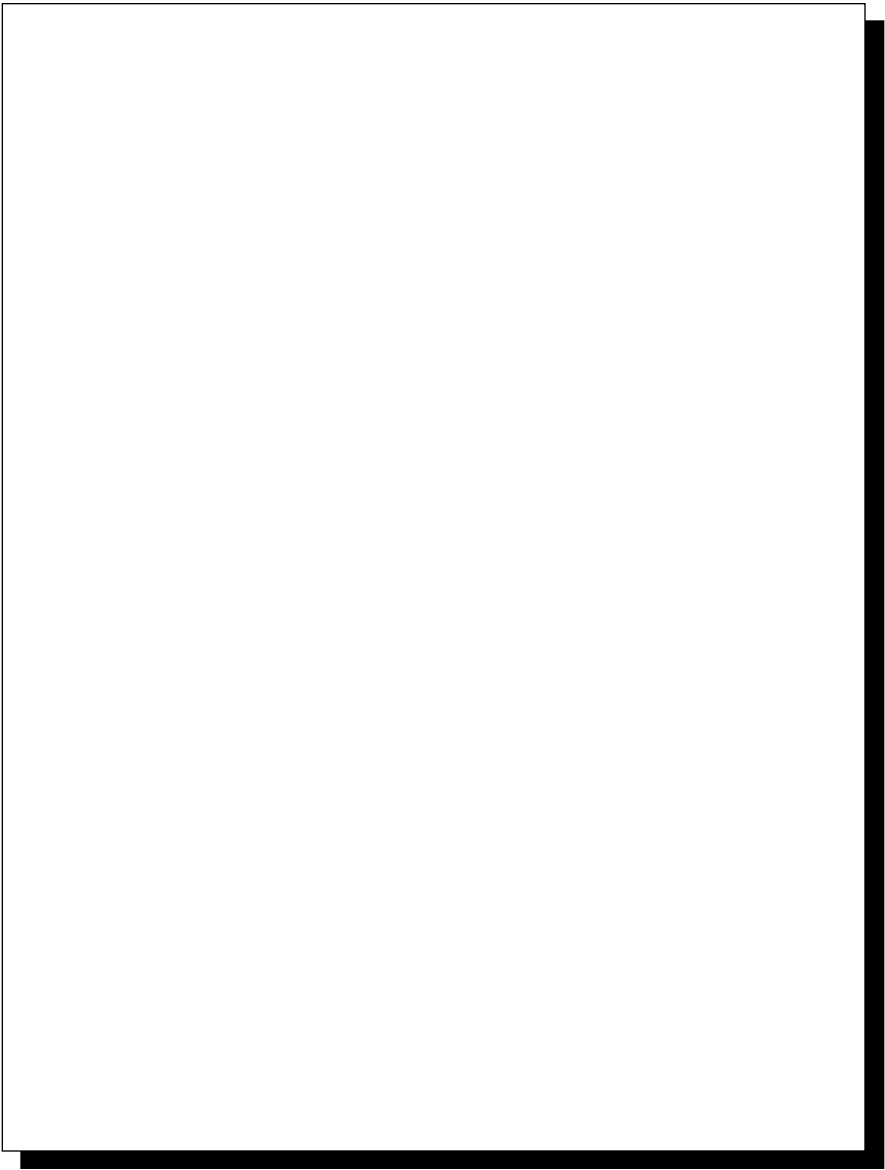
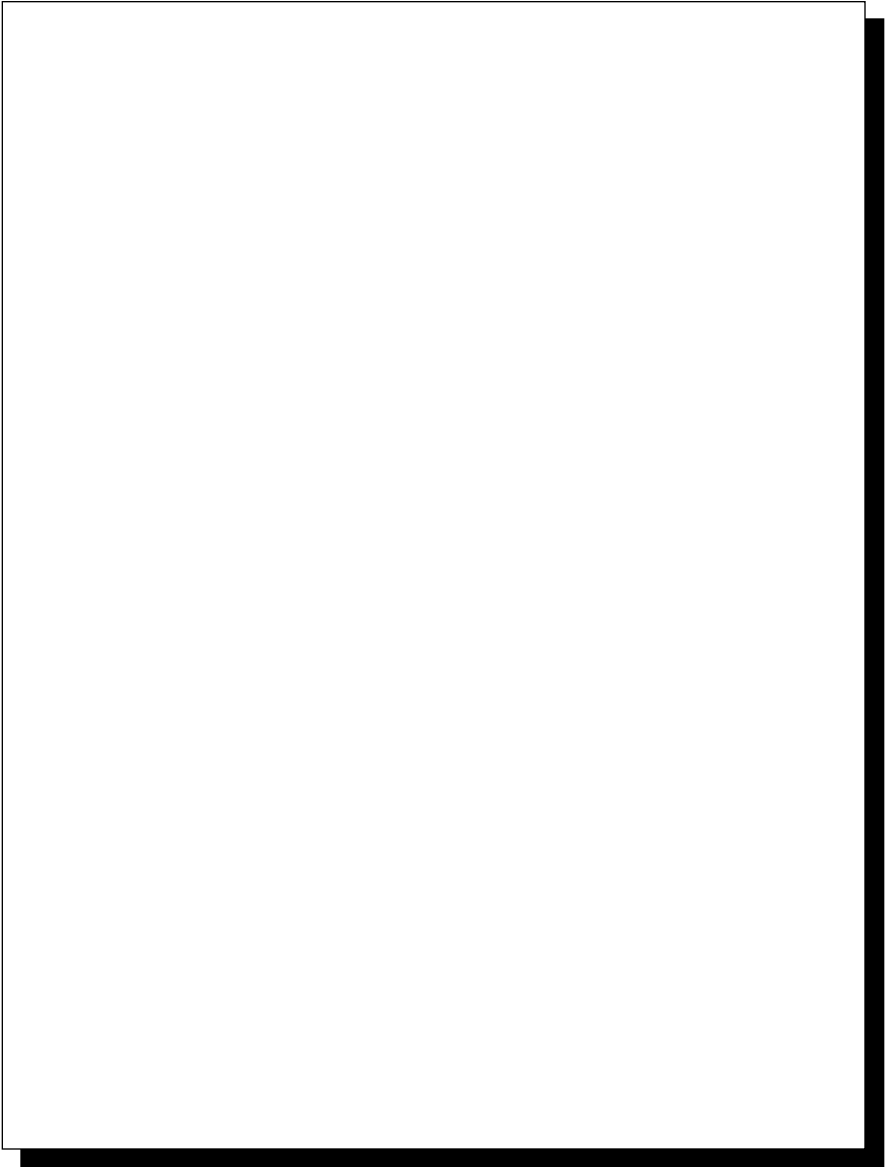


Figure 2-2



original declaration date. In this case, the grantee (State) usually conducts additional applicants' briefings to update new applicants. If the NOI is not submitted at the briefing, it may be submitted to the GAR no later than 30 days after the particular county where the facility is located is designated. The date a county was designated for **public assistance** is the start of the 30-day period for the submission of the NOI.

In accordance with the regulation for administration of such grants (44 Code of Federal Regulations, Part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), the State government is the applicant (grantee) for the disaster assistance grant from FEMA. The State will submit one application to FEMA on Standard Form (SF) 424, Application for Federal Assistance, on behalf of all local governments, State agencies, PNPs and other applicants. Attachment D to the SF 424, Assurances for Construction Programs, is part of that submission (the basis for that application will be discussed below). The State will then accept applications from those applicants and will process subgrants to them. The actual procedures for these subgrants will be determined by each State.

In the event that a State is legally unable to assume the responsibilities of the grantee on behalf of an Indian Tribe as prescribed in the regulations, the Indian Tribe or authorized tribal organization may be considered as a grantee and submit the application directly to FEMA.

Damage Surveys

The next step in the assistance process is a survey of the damage sites by a Federal/State/local inspection team. The applicant will ensure that a knowledgeable person is immediately available to meet the inspectors when they arrive, and is prepared to escort them to the damage sites. The inspection team will call the applicant as much ahead of time as possible to schedule appointments. For applicants with a large number of damaged facilities or different categories of damaged facilities, more than one local representative may be necessary. In such cases, the applicant representative noted on the NOI is responsible for ensuring the availability of any other local representatives necessary to assist the team. The follow-

ing checklist should be used by the applicant's representatives to prepare for the damage survey inspections.

In order to expedite the damage survey process, applicants are requested to take the following steps *before* the arrival of the inspectors:

1. Prepare a list of all facilities damaged as a direct result of the disaster, including those where repair work may already have been performed. Segregate work/damages into appropriate categories (A through G as identified on the NOI). Include both work that has been completed and that which has not.
2. Mark the location of each damage site on a suitable map.
3. Have photographs, site sketches or drawings of each damage site available for inspectors (especially where work has already been performed).
4. Compile a detailed breakdown of labor (including fringe benefits), equipment, and material costs for each location where work has been done. Include contract costs for emergency or permanent restorative work in progress or completed. Separate all costs by work site.
5. Provide force account equipment use and mileage records for cars, pickups and vans. Provide hourly use records for other types of equipment, categorized and described in a manner compatible with the FEMA Schedule of Equipment Rates.
6. Provide applicant's emergency personnel overtime records for disaster-related work. Provide records reflecting mileage for disaster-related use of emergency vehicles.
7. Provide inspectors with policy information on insurance coverage and any proceeds received or contemplated.
8. List equipment, materials or inventory lost as a result of the disaster. Provide copies of estimates, bids, purchase orders, invoices, inventory records or other substantiating evidence to verify loss values or replacement cost.
9. Ensure that a knowledgeable person (engineer, superintendent, public works director, etc.) accompanies the survey team. This person must have knowledge of work already done as well as all damaged facilities needing work.

10. If damaged facilities are to be restored in accordance with adopted codes or standards different from the original construction, provide inspectors with copies of appropriate standards.

The survey team will inspect every damaged facility and review all applicable records to determine the extent of the disaster damage, the scope of eligible work, and the estimated cost of that work. However, the inspection team will not randomly search for damaged facilities. The applicant must identify all damages ahead of time and be prepared to guide the team to each site.

All pertinent information is recorded on a Damage Survey Report (DSR) Data Sheet (FEMA Form 90-91), shown in Figure 3. The facility is identified along with its location. The specific damage to the facility must be described in quantitative terms and the proposed repairs described in the “scope of eligible work” section (Block 13.) The estimate of eligible work, reflected in Part II of this form, generally will be based upon a quantitative estimate of the work necessary to complete the repairs. This work may be expressed as cubic yards of debris, square yards of pavement, feet of 24-inch-diameter pipe, square feet of roof, square feet of building, etc., furnished and put in place. The unit price includes all items of cost (labor, material and equipment) to make a complete repair.

When the work is already completed or partially completed by the time the inspection team arrives, actual eligible costs for the completed work (if available) will be recorded on the DSR, and the remainder of the work will be estimated. This procedure usually occurs with emergency work performed during or immediately after the event. The inspector will need to know what specific work was performed in quantitative terms, i.e., cubic yards of debris, sandbags placed, etc., and, from applicant records, the hours of labor and equipment time spent and the amounts of materials purchased or taken from stockpile. Materials will be charged at an applicant's actual cost. For emergency work (Categories A and B) the eligible costs for labor will only be the overtime wages actually paid, including fringe benefits, for regularly employed personnel performing the work. However, regular and overtime wages and fringe benefits for temporary employees hired to do disaster work is eligible. It is important to show both regular and overtime labor costs for all employees (regular and temporary) to justify equipment usage. Equipment usage should not exceed the combination

of regular and overtime labor. For applicant-owned equipment used in the work, the eligible cost calculation will generally be based on the applicable FEMA equipment rate (see Equipment Rates in Section F of Chapter 3). If detailed documentation on the actual costs is not readily available for completed work, the inspector will estimate costs for the work as described to him/her so that a DSR may be processed. This procedure will allow “small projects” (discussed below under *Types of Grants*) to be obligated and the Federal share to be paid as quickly as possible. It will also ensure that the inspection process is not unnecessarily delayed.

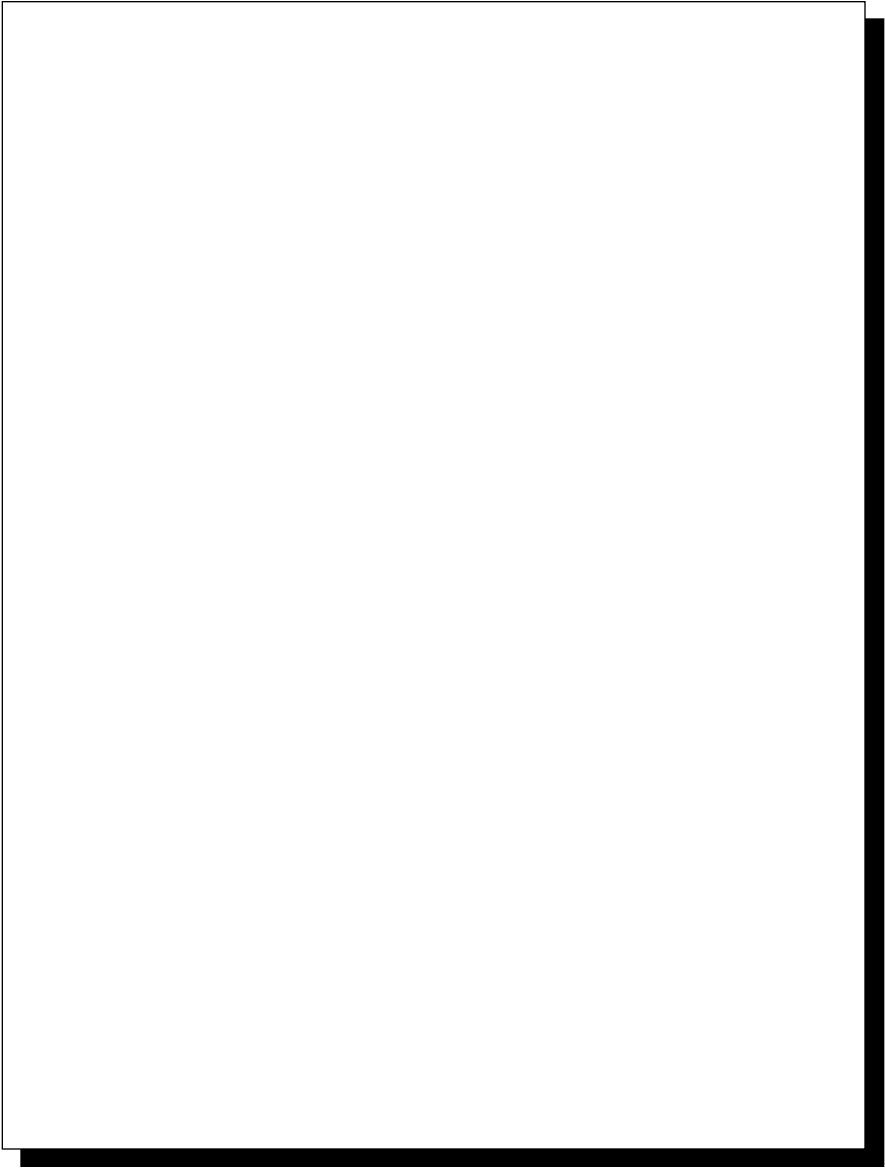
Unit Prices

For estimating purposes, FEMA has organized and coded typical work and materials normally needed in disaster recovery situations into a unit price list. Before starting the damage surveys, FEMA and the State will jointly develop unit costs to be used in a particular disaster for those types of work found on the unit price list. These costs are generally based on the then current average costs obtained from State and local governments, local contractors, and regional costs from existing studies. If a community wishes to justify different unit prices than those shown on the unit price list, then the rates and the justification must be reviewed by FEMA before being used for damage surveys in that community. Much of the work may not fit into the categories of the unit prices in FEMA’s list, especially for unusual types of disaster events. Estimates for these items may be developed from a local official’s knowledge, or contractors in the area. The estimates may be expressed in unit prices or in labor, materials and equipment. In the case of larger projects, an optional procedure would be for the first DSR to cover only engineering and design work, and the DSR for the actual construction work would be written after contractor bids on the work are submitted. The engineering and design costs that would be eligible for funding by FEMA must be reasonable for the project being designed. Eligible design work will be only for eligible repair work.

Scope of Work Description

The description of the damage and the scope of work to repair that damage is the most important part of the DSR. Inspectors need to prepare a concise, comprehensive scope of work and applicants

Figure 2-3



DAMAGE SURVEY REPORT - DATA SHEET

Please read the following carefully before completing the form.

PAPERWORK BURDEN DISCLOSURE NOTICE

"Public reporting burden for this form is estimated to average 30 minutes per response. The burden estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing and submitting the form. Send comments regarding the accuracy of the burden estimate and any suggestions for reducing the burden to: Information Collections Management, Federal Emergency Management Agency, 500 C Street, SW, Washington, DC 20472."

need to complete the eligible work as prescribed in the scope of work (DSR Block 13). When describing the scope of work on the data sheet, care must be taken to include enough detail to support what is to be done and why it is being done. Construction projects, either permanent restoration or emergency repairs, are fairly easy to describe. Emergency actions that involve time of personnel rather than activities that produce a tangible product may be more difficult. Debris clearance can usually be described in terms of a quantity and type of material. Debris clearance work that is already completed should be described in terms of extent (dimensions of the area covered), type of debris, density and any other information that will justify the amount of effort already expended. If the information is available, labor and equipment hours actually expended on the completed work should be shown. The remaining work would be shown in similar terms.

Emergency activities of police or fire personnel should be described in enough detail to justify the need. "Patrol city-wide" is not a sufficient description. A description of the problem and of the actions taken or needed to solve it, is necessary.

Inspector Agreement

The Federal, State and local inspectors should primarily be in agreement on the scope of eligible work, and secondly on the estimated cost of the work recorded on the DSR Data Sheet. If the State or local representative does not agree with the damage description or the proposed repair on the DSR Data Sheet, then that should be noted with an attachment indicating the nature of the disagreement, along with the applicant's proposal. It should be recognized that the scope of eligible work and costs identified on the DSR Data Sheet are estimates subject to FEMA review. They can be modified later if justified. A DSR prepared by the Federal inspector is not a Federal approval of a project, nor is it an obligation of Federal funds. The DSR is a recommendation by the inspectors to FEMA which must be approved by the Disaster Recovery Manager (DRM) or the Regional Director before becoming the basis for Federal funding.

Time Limits

Any damaged facility or emergency work that is not shown or reported to the inspection team during its initial visit must be reported to the GAR by the applicant's agent within 60 days following completion of that initial visit with a request for an inspection. Therefore, ensure that all damage sites are identified as soon as possible and that the inspection team visits those sites. A new damage site is different from the discovery of additional work or costs on a project already identified to the inspection team. The reporting of additional work or costs is not subject to the 60-day time limit. This is discussed later under cost overruns.

Section C - Project Application Approval

Upon completion of the field surveys, the DSR Data Sheets for an applicant are reviewed and approved by the DRM, thereby becoming the basis for Federal funding. During the review of the DSRs, FEMA must ensure that the projects approved meet certain Federal statutory and regulatory requirements, such as those for floodplain management and hazard mitigation. Consequently, the scope of eligible work identified by the inspection team on the DSR Data Sheet may require modification. Significant modifications of the scope of work or estimated costs will be discussed with the subgrantee by the GAR or State Public Assistance Officer (PAO) either before or at the time the project application is returned. The subgrantee may appeal any change with which it disagrees. Copies of the approved DSRs are then provided to the GAR together with a summary of all DSRs included in the approved project application (PA). **This summary is called a Project Application Summary (P.2 Report).** FEMA's action on a DSR will be taken within 45 days of the inspection or a written explanation of any delay, such as the need for a reinspection, or for additional documentation, will be provided to the GAR. The GAR provides copies of the approved DSRs to the community representative. If a nonconcurrence has been indicated on any of the DSR Data Sheets prepared for an applicant, then the GAR will work closely with that applicant and the DRM to resolve the nonconcurrence. If resolution cannot be reached quickly, and the applicant is not satisfied, an appeal should be submitted in accordance with Section E of this chapter.

The time limitations set for the submission of the NOI, PA, and DSRs may be modified by FEMA when justified in writing to FEMA by the GAR. A strong justification must be based on unusual circumstances that are beyond the control of the grantee or subgrantee.

Types of Grants

All of the grants that will be discussed in this section are subject to cost-sharing between the Federal government and the non-Federal interests. The Stafford Act specifies that the Federal share will not be less than 75 percent of eligible costs. In limited cases the Federal share may be more than 75 percent. The actual share will be established in the FEMA-State Agreement. The State portion of the non-Federal share will be determined by the State and may vary from all to none. The administrative allowance, which is a percentage of eligible costs is provided at 100-percent Federal share. See the discussion of Administrative Allowances in Section F for details of how these are calculated for grantees and subgrantees.

Small Projects

The Stafford Act provides for a small project grant, which is a simplified procedure designed to speed payment of disaster assistance funds to applicants when the cost of a project is below a certain threshold. When the Federal estimate of a project is below that threshold, payment of the Federal share is based on the Federal estimate rather than on the actual costs of the work. The basis for all PAs for a subgrantee is the DSR. An application is made up of one or more DSRs. DSRs are classified according to the dollar amount of the Federal estimate of the cost for the eligible work. **The dividing line between “small” and “large” projects was established at \$35,000 by the Stafford Act (a project estimated exactly at the threshold amount is classified as “large”).** This threshold is adjusted annually at the beginning of the fiscal year (October 1) to reflect changes in the Consumer Price Index for All Urban Consumers. The threshold for FY 1998 is \$47,100. The new threshold is published by FEMA in the *Federal Register* just before the beginning of the fiscal year. The determination of the threshold that will be used to classify a project is based on the declaration date of the disaster, regardless of when project approval is made or when the work is performed. The determination of large

versus small projects is key to the process of payment for the Federal share, as will be seen later.

The term project used here is defined as all work of a single category performed at a single site whether or not described on a single DSR. If the work involves a building or other facility whose physical limits are easily defined, the definition of a site is simple. If the work is on part of a larger network or system such as roads or pipelines, then the site will include that portion of the system which is operationally dependent on the damaged portion. This definition should be considered when determining if a project is over the small project threshold. Some construction projects may have different phases or components on different DSRs, all of which are really one project. An example of this might be an architectural and engineering (A&E) DSR that is less than the threshold, but when combined with the construction work, the project is over the threshold and therefore it must be treated as a large project. Continuing operations, such as renting of temporary facilities for essential community services or the management of the disaster by the grantee, may be approved in six-month increments in order to maintain control of costs. In this situation, individual DSRs may be less than the threshold, while the overall item of work is a "large project."

Some work, such as debris clearance or emergency response actions by police or fire department personnel, may not be easily separated into discreet projects. The amount of debris clearance work included on a single DSR normally should not exceed the amount of work that would be included in a single contract. Emergency protective measures taken for an individual facility would be treated as separate DSR for each facility. Other Category B work should not be arbitrarily divided into small units to create "small projects." Each case will be determined on an individual basis.

The grantee is required to make payment of the Federal share of small projects, as promptly as possible after the FEMA approval. The grantee is also encouraged to make prompt payment of the State contribution at the same time. To assist this process, the Federal share is available to the State through an electronic transfer as soon as the DSRs are approved by the DRM. However, State requirements on the disbursement of funds to the subgrantee will determine the speed of disbursement below the State level. The Federal payment will not be reduced if the actual cost of the project

is discovered later to be less than the original estimate. The amount of the State share and how it will be paid will vary from State to State.

Cost Overruns

There is a procedure by which a subgrantee may request additional funds if cost overruns are incurred on small projects. The requirement is that the request be made with respect to all small projects of that one subgrantee. When the subgrantee discovers a significant overrun related to the total final cost for all small projects, then an appeal may be made for the additional funds within 60 days of the completion of all small projects. The appeal must include documentation of costs for all of the small projects so that underruns for eligible work may be balanced against overruns for eligible work before any additional funds are approved. This requirement for documentation is a significant difference from the normal procedure for small projects where cost records are not required to be submitted to FEMA. In all situations however, there is still a requirement to retain records for three years after final payment for the possibility of audit (see also Changes in Scope of Work and Costs in Chapter 4).

Inspections

There is usually no requirement for final Federal inspection of small projects, although a grantee may wish to inspect some, or all, small projects. The primary requirement is that the project be completed in accordance with FEMA standards and policies. Normally this means doing what is stated in the scope of work on the DSR. However, an applicant may also request an "improved project" which may be approved by the GAR. If the improved project will require an Environmental Assessment (EA), the GAR must delay approval until completion of an EA by FEMA. An "alternate project" must be approved by FEMA. These two types of projects are discussed below. Before the closeout of the disaster contract, the grantee must certify in writing to FEMA that all small projects have been completed in accordance with FEMA's standards and policies.

Large Projects

Any project which is not a small project is, by definition, a large project. When the Federal estimate of costs for a project is over the

threshold, payment of the Federal share is based upon the reasonable actual eligible costs incurred by the subgrantee. The estimate on the DSR is prepared as carefully as possible, but that figure is not necessarily the final cost that will be approved for the project. Changes may be made to the approved amount after the work is completed and the actual cost is known. The GAR should be notified as soon as it is known that the cost of a project will be different from the DSR amount. This may occur at any time during the design or construction phases of the project. If necessary, the GAR will request that a revised DSR be written. There is a procedure which may be used for major large projects (over approximately \$200,000) which will be done by contract that should avoid large adjustments to the DSR amount. For these cases, the initial DSR will approve funding for A&E services based on a probable scope of eligible work for the project. When the design is complete and approved by FEMA, bids can be solicited and a construction DSR can then be written and approved for the selected bid amount. The subgrantee must receive approval before beginning the project. A discussion of payments on these projects is contained in Section D - Payment of Claims.

Improved Projects

There may be times when a subgrantee wishes to take advantage of the opportunity presented by the necessary repairs to a disaster-damaged facility to make improvements or change the design of the facility. This may be done with no change in the original amount approved for the repairs if the original function and capacity of the facility is retained. An improved project grant is available for either large or small projects. The basis for the FEMA approval will be limited to the Federal estimate of the eligible disaster-related repairs. An estimate is used rather than actual costs because the work actually accomplished on the project will normally be quite different from the work described on the DSR, and it is not possible to use actual costs as the basis for the Federal payment. The grantee has the authority to approve an "improved project." The subgrantee must receive approval before beginning the project. **However, if the improved project involves a new site, as might be the case in the event of total replacement of the facility, an EA may be required. This type of an improved project proposal is required to undergo an EA because the project will not meet the**

criteria for an exception from an EA in Section 316 of the Stafford Act. An EA must be prepared by FEMA. Therefore, FEMA must approve this type of improved project and such approval must be obtained before the start of construction.

If the improved project involves a replacement facility, at the same or new site, funding for mitigation work approved on the original DSR will not be eligible for the improved project.

The FEMA funds may be combined with a grant from another Federal department or agency to construct the improved project as long as neither Federal grant is used as the required local cost-share of the other Federal grant.

Alternate Projects

There is another situation where the work actually accomplished is different from what is approved on the DSR. It is called an “alternate project.” When a subgrantee determines that the public welfare would not be best served by restoring a damaged facility or the function of that facility, the grantee may request that FEMA approve an alternate project. This may occur if the facility represents excess capacity for the service it was providing or is no longer needed for some other reason. **All alternate projects must be approved by FEMA because they are required to have an EA performed on the proposal.**

This option is available for large or small projects but may be taken only on permanent restoration projects. Debris removal projects and emergency protective measures are not eligible. FEMA funding will be 90 percent of the Federal share of the approved Federal estimate for the eligible work without any added mitigation measures, or the actual cost of completed approved projects, whichever is lesser.

Projects upon which the funds may be spent include:

- ◆ Repair or expansion of other selected public facilities. This means that the funds may not be used as the local share of the cost of repairing disaster damaged facilities for which FEMA assistance is being granted. There is also a requirement on all Federal grants that a Federal grant (such as a FEMA alternate project) may not be used as the local matching share for any other Federal grant; however, the FEMA

grant may be used as the supplemental funds for an “improved project” or to repair other facilities not damaged in the current disaster event.

- ◆ Construction of new facilities.
- ◆ Purchase of capital equipment.
- ◆ Funding of hazard mitigation measures. These would include construction of physical facilities, development of regulations, or other activities which would otherwise be eligible through the Hazard Mitigation Grant Program under Section 404 of the Stafford Act.

As with the improved project, the basis for the amount to be approved for an alternate project is the Federal **estimate** of the eligible work. The actual cost of the substitute project is not used to determine payment, although the grantee will be required to certify that all eligible funds (Federal and non-Federal shares) were spent on the approved substitute project. When a PNP applicant chooses this option, the alternate facility itself must be an eligible PNP facility as defined in Section A of this chapter.

Section D - Payment of Claims

This section covers payments of approved funds to the grantee for all types of projects. The primary factor that differentiates the payment method is whether the project is small or large.

Small Projects

When a “small project” is approved and the funds are obligated, the grantee is authorized to draw the Federal share of the eligible costs for that project by electronic funds transfer. The grantee is required to make the payment of that Federal share to the subgrantee as soon as practicable after FEMA’s approval; however, State requirements for disbursement of Federal funds being passed through to subgrantees will govern these payments. The grantee is also encouraged to make payment of the State portion of the nonfederal share as soon as practicable. However, State requirements for documentation and/or inspections may govern those payments.

Prior to the closeout of the disaster contract, the grantee is required to certify that all small projects have been completed in accordance with FEMA standards and policies and that payments due have been made to the subgrantee as specified in the FEMA-State Agreement. This certification does not specify the amount spent on the project, only that the project was completed. If the applicant spends less than what FEMA approved in the scope of work on the DSR, the FEMA share will not be reduced below the Federal share of the Federal estimate as established in the FEMA-State Agreement. If more than the estimate is spent, the procedure described in *Changes in Scope of Work and Costs* in Chapter 4 for requesting additional funds may be followed.

Large Projects

When a large project is approved and funds obligated, it does not mean that those funds may immediately be drawn down by the State. For these projects, progress payments may be made by the grantee for actual costs documented and requested by the subgrantee. These requests may be for bills already in hand or for funds anticipated to be needed in the near future (less than a week). The grantee shall draw from the Federal government only the Federal share portion of the payment in making such progress payments. The regulations for grant administration (44 CFR Part 13) provide that payments may be made in advance of actual expenditure if recipients demonstrate the willingness and ability to maintain procedures to minimize the time elapsing between the transfer of the funds and their disbursement by the grantee or subgrantee. Department of the Treasury regulations, 31 CFR Part 205, govern these procedures. The general guidelines are to allow no more than 3 to 4 days between transfer to the grantee's account and disbursement to the subgrantee.

As previously stated, procedures for transfer between grantee and subgrantee are controlled by the State. In anticipating the need for payments to contractors, a subgrantee should be aware of and take into account the time that the State process requires for approval of requests and disbursement.

For projects involving large dollar amounts (over \$200,000) or complex design, the preferred method is for a DSR for the A&E work to be approved first, based on an anticipated eligible scope of work. Bids would be solicited and, after the actual eligible scope

of work and estimated cost of the project are known, a DSR for the construction work can be written. Even if the engineering DSR is less than the small project threshold, it is still considered part of the overall large project. Therefore, the disbursement rules for large projects will apply for the A&E work as well as the construction. The grantee will generally hold back some amount of eligible costs for a large project until the work is complete and it is known that funds were properly expended.

Upon completion of a large project, supporting documentation and an accounting of all eligible costs incurred for the project are submitted by the grantee to FEMA for a final determination of eligible project costs. The grantee shall certify that the reported costs were incurred in the performance of eligible work and that the project was completed in accordance with FEMA approval. In order to satisfy itself for this certification, the grantee may perform such inspections and audits as it deems necessary. FEMA will review the reported costs to determine if the costs are eligible. The DRM may conduct such inspections or audits as are necessary to verify eligible costs. A supplemental DSR will be prepared to adjust the approved amount upward or downward as the case may be. If additional funds are approved by FEMA, the grantee may then make an additional draw-down of any funds remaining for that project.

Within 90 days following completion of the last large project, a final progress report must be submitted and it will include the final amount paid for each large project. If it is determined that some ineligible costs had been drawn down by the grantee, then any excess drawdown of Federal share funds shall be returned to FEMA.

Section E - Appeals

Any decision regarding eligibility for, form of, or amount of assistance under the Stafford Act may be appealed by an applicant for assistance. Some types of determinations that can be appealed include the following:

- ◆ An entity is not an eligible applicant;
- ◆ A facility or certain work is not eligible;
- ◆ The approved eligible cost is less than what the applicant believes is necessary for the work;
- ◆ A time extension for completion of work is not warranted; or,

- ◆ Certain costs claimed for work are not eligible. The appeal must be submitted within 60 days of receipt of notice of a determination which has been made by either FEMA or the grantee. The date of the letter from the applicant to the grantee will determine if the deadline is met.

The appeal process consists of three levels. The first appeal is submitted to the FEMA Regional Director; the second to the Associate Director of Response and Recovery (hereinafter, Associate Director); and the third to the FEMA Director. Each appeal is to be processed through the grantee for review and comment before being forwarded to FEMA. Procedures and requirements for each level are discussed below.

First Appeal

The subgrantee must submit the appeal in writing to the grantee, requesting submission to the FEMA Regional Director. The appeal must specify what work or costs have been determined ineligible or other actions by FEMA that the applicant disagrees with. There should be a specific action by FEMA being appealed rather than a recommendation by an inspector or auditor made prior to an actual determination by FEMA. The appeal should contain justification explaining why the applicant believes the original determination is wrong and the amount of adjustment being requested rather than just general dissatisfaction with the amount of assistance granted.

Time extension decisions which are made by the grantee may also be appealed to the FEMA Regional Director.

The grantee will review the appeal documentation and request additional information if necessary. The grantee will then prepare a written recommendation on the merits of the appeal and forward that recommendation to FEMA within 60 days of its receipt of the appeal letter or receipt of additional information which it had requested. The Regional Director will review the appeal and within 90 days will take one of two actions: a decision on the appeal will be returned to the grantee or additional information will be requested. Normally, the applicant will have 60 days to provide that additional information. The Regional Director will provide a decision on the appeal within 90 days of receipt of the information. If the appeal is granted, the Regional Director will take appropriate

action such as approving additional funds or scheduling an inspection to determine actual additional eligible funding.

Second Appeal

If an appeal is denied by the Regional Director, and if the subgrantee wishes, a second appeal may be submitted to the Associate Director. The applicant's letter must be dated within 60 days of its receipt of the Regional Director's denial. This appeal will also be submitted through the grantee who will submit it within 60 days with a written recommendation to the Regional Director. The Regional Director will review the information provided with the appeal and, if additional information is required, will request such information. The appeal will then be forwarded with a recommendation for action to the Associate Director as soon as practicable.

The Associate Director will review the appeal and within 90 days will render a decision or request additional information from the applicant. In an unusual case involving highly technical issues, the Associate Director may request an analysis by an independent scientific or technical group or person having expertise in the subject matter of the appeal. Upon receipt of the applicant's information or the technical report, the Associate Director shall render a determination on the appeal within 90 days. Any required actions, such as obligation or deobligation of funds, will be taken by the Regional Director.

Third Appeal

If the Associate Director denies the second appeal, the subgrantee has one more opportunity to make an appeal, this time to the Director of FEMA.

The time deadline is again 60 days after the applicant's receipt of notice of the Associate Director's denial. The appeal will be submitted through the grantee, Regional Director, and Associate Director, who will each make a recommendation before forwarding the appeal to the next level. The procedures followed by the Director are the same as by the Associate Director with two additions. If there is a need to select a technical group or person for review of an unusual appeal with technical issues, the Director may consult with the grantee or the subgrantee.

The Director may also submit the appeal to persons within FEMA who are not associated with FEMA's Disaster Assistance Programs and ask for their recommendations on resolution of the appeal. In this case, within 60 days after receipt of a recommendation from an independent group or the other FEMA office, the Director will make a determination on the appeal and notify the grantee in writing. Otherwise, a decision will be rendered within 90 days.

Section F - Direct Federal Assistance

When the impact of a disaster is so severe that neither the local government nor the State can respond, a request may be made that certain emergency work be performed by a Federal agency. The lack of capability must include both an inability for a State or local government to perform the work itself or to contract for the work with private firms in the area. The work that can be performed under this authority is **limited to emergency work and debris removal, under sections 402(4), 403, and 407 of the Stafford Act.**

The work to be performed must be eligible under the Stafford Act and the regulations. The assistance will also be subject to the cost sharing provisions applicable to the disaster, as specified in the FEMA-State Agreement. The grantee will reimburse FEMA for the appropriate non-Federal share of the cost of the work including any administrative costs of the performing Federal agency.

A request for direct Federal assistance shall be submitted by the grantee to the DRM either on its own behalf or on behalf of a subgrantee. The request shall include the following items:

1. A written agreement that the State will:
 - (i) Provide, without cost to the United States, all lands, easements and rights-of-way necessary to complete the approved work;
 - (ii) Hold and save the United States free from damages due to the requested work and indemnify the Federal government against any claims arising from such work;
 - (iii) Provide reimbursement to FEMA for the non-Federal share of the cost of the work; and,
 - (iv) Assist the performing Federal department or agency in all support and local jurisdictional matters.

2. A statement as to why the State and local governments are unable to perform or contract for the work.
3. If the grantee is legally unable to agree to items (i) and (ii) above, a statement from the subgrantee that they will be responsible for the items. The provision of lands, easements or rights-of-way without cost to the United States means that any leasing or purchase costs will be borne by non-Federal interests. The costs of preparation for the assistance operation and costs of restoration to pre-operation condition will be eligible for FEMA assistance.

If the DRM concurs with the request, a mission assignment will be made to the appropriate Federal department or agency. That agency may perform the work directly or it may contract with private firms.

DSRs will be prepared for the requested work in the normal manner to establish the eligible scope and estimated cost of work. The cost of work will include a charge for expenses of the performing Federal agency in addition to the actual work described on the DSR. The non-Federal share will include the appropriate percentage of those extra expenses.